

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ADLIFE MARKETING &  
COMMUNICATIONS COMPANY,  
INC.,

Plaintiff,

v.

WAL-MART.COM USA, LLC,

Defendant.

Case No. 2:20-cv-01711-RPK-ARL

**DEFENDANT WALMART.COM,  
LLC'S ANSWER TO PLAINTIFF'S  
COMPLAINT**

Complaint served: April 7, 2020

Hon. Rachel P. Kovner (presiding)  
Hon. Arlene R. Lindsay (referral)

Defendant Walmart.com USA,, LLC (“Defendant”), hereby submits its Answer and Affirmative Defenses to AdLife Communications Company, Inc. (“Plaintiff”)’s Complaint alleging copyright infringement (the “Complaint”), as follows:

**NATURE OF THE ACTION**

1. In response to Paragraph 1 of the Complaint, Defendant admits that the Complaint purports to allege actions under Section 501 of the Copyright Act of 1976. Defendant denies the remaining allegations of this paragraph.

**JURISDICTION AND VENUE**

2. In response to Paragraph 2 of the Complaint, Defendant admits that the Complaint purports to allege actions under the Copyright Act of 1976, Title 17 U.S.C., §§101 *et seq.* The allegation concerning federal question jurisdiction is a legal conclusion to which no response is required. Defendant does not contest this Court’s subject matter jurisdiction in this action.

DEFENDANT WALMART INC.'S ANSWER TO  
PLAINTIFF'S COMPLAINT

3. Defendant admits that it transacts business in New York and that it is registered with the New York State Department of State Divisions of Corporations to do business in the state. Defendant does not contest this Court's personal jurisdiction over Defendant.

4. The allegation in Paragraph 4 of the Complaint concerning venue is a legal conclusion to which no response is required. Defendant does not contest that venue is proper in this Judicial District in this action.

#### PARTIES

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of allegations in Paragraph 5 of the Complaint, and therefore denies the same.

6. In response to Paragraph 6 of the Complaint, Defendant admits that it is a corporation organized and existing under the laws of the state of Delaware, and that it has a place of business at 77 Green Acres Road, Valley Stream, NY 11581. Defendant admits that it is registered to do business with the New York State Department of Corporations, and that it owns and operates the website located at [www.Walmart.com](http://www.Walmart.com).

#### PARTIES

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint, and therefore denies the same.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint, and therefore denies the same.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint, and therefore denies the same.

10. Defendant admits that the Photograph depicted in Exhibit A of the Complaint appears to be the same as one that was uploaded to its website. Defendant denies the remaining allegations in Paragraph 10 of the Complaint.

11. Defendant admits that it did not license the Photograph from Plaintiff. Defendant denies the remaining allegations in Paragraph 11 of the Complaint.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

12. Defendant restates and incorporates by reference its responses to Paragraphs 1 through 11 of the Complaint.

13. Defendant denies the allegations in Paragraph 13 of the Complaint.
14. Defendant denies the allegations in Paragraph 14 of the Complaint.
15. Defendant denies the allegations in Paragraph 15 of the Complaint.
16. Defendant denies the allegations in Paragraph 16 of the Complaint.
17. Defendant denies the allegations in Paragraph 17 of the Complaint.
18. Defendant denies the allegations in Paragraph 18 of the Complaint.

**GENERAL DENIAL**

Defendant denies each and every factual allegation in the Complaint that is not specifically admitted or otherwise addressed in the preceding paragraphs and demands strict proof thereof.

**PRAYER FOR RELIEF**

Defendant denies all of the allegations and averments contained in the “Prayer for Relief” section of the Complaint. Defendant further denies that Plaintiff is entitled to any relief whatsoever.

///

**AFFIRMATIVE DEFENSES**

Defendant asserts the following affirmative defenses based upon information presently available. Defendant reserves the right to assert additional affirmative defenses, or withdraw any of these affirmative defenses as further information becomes available.

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to allege facts sufficient to state a claim for relief against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

On information and belief, Plaintiff's claim is barred as the subject Photograph is not an original work of authorship, and thus is not entitled to copyright protection.

**THIRD AFFIRMATIVE DEFENSE**

On information and belief, Plaintiff's claim is barred in that Plaintiff's subject Photograph incorporates the copyrighted and/or trademarked material of a third-party.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff cannot prevail on its claim against Defendant as its claims are barred by the doctrine of misuse of copyright.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred (in whole or in part) by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred (in whole or in part) by the doctrine of release, waiver, and/or estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff cannot prevail on its claim against Defendant as its claims are

barred by the doctrine of fair use.

**EIGHTH AFFIRMATIVE DEFENSE**

To the extent Defendant infringed any copyright interest purportedly held by Plaintiff relating to the subject Photograph, which it denies, it did so with non-willful, innocent intent.

**NINTH AFFIRMATIVE DEFENSE**

On information and belief, Plaintiff has not sustained any injury or damage as a result of any act or conduct by Defendant with respect to the subject Photograph as Plaintiff has not rightfully licensed or received any money from the sale or licensing of the same.

**TENTH AFFIRMATIVE DEFENSE**

Defendant presently has insufficient knowledge and information as to whether it may have additional defenses available. Defendant reserves the right to assert additional defenses.

**WHEREFORE**, having fully defended, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by its Complaint, and that the Complaint be dismissed with prejudice;
2. That Defendant be awarded its costs of suit, including reasonable attorney's fees;
3. For such other and further relief as the Court deems just and proper.

Dated: May 28, 2020

**ARENT FOX LLP**

1301 Avenue of the Americas, 42nd Floor  
New York, NY 10019-6040  
(212) 484-3900

By: /s/ Allan E. Anderson

ALLAN E. ANDERSON  
ELIZABETH H. COHEN  
Attorneys for Defendant  
WALMART INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was transmitted via the CM/ECF filing system for the Eastern District of New York for service on all parties on this 28<sup>th</sup> day of May 2020.

/s/ Allan E. Anderson  
Allan E. Anderson